Supreme Court, U.S.
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No. 02-1684

In The

Supreme Court of the United States

MICHAEL YARBOROUGH,
Warden of California State Prison-Los Angeles County,

Petitioner,

v.

MICHAEL ALVARADO,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in applying the objective test for a "custody" determination under *Miranda v. Arizona*, 384 U.S. 436 (1966), a court must consider the age and experience of a person if he or she is a juvenile.

2. Whether a state court adjudication can be deemed an "objectively unreasonable" application of clearly established Supreme Court precedent, for purposes of 28 U.S.C. § 2254(d), because it declines to "extend" the rule of a Supreme Court precedent to a new context.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
A. THE NINTH CIRCUIT'S DECISION IS NOT INCONSISTENT WITH THIS COURT'S DECISION IN *MIRANDA* NOR DOES IT CONFLICT WITH THE DECISION OF THE 6TH AND 8TH CIRCUIT COURT OF APPEALS	2
B. THE CIRCUIT COURTS OF APPEALS ARE NOT DIVIDED OVER WHETHER A STATE COURT ADJUDICATION CAN BE DEEMED "OBJECTIVELY UNREASONABLE" FOR PURPOSES OF 28 U.S.C. § 2254, WHERE THE STATE COURT DECLINES TO "EXTEND" THE RULE OF A SUPREME COURT PRECEDENT TO A NEW CONTEXT SINCE BOTH THE 9TH AND 11TH CIRCUITS AGREE THAT IT CAN	5
CONCLUSION	8

TABLE OF AUTHORITIES

	Page
CASES	
Berkemer v. McCarty, 468 U.S. 420 (1984)	2, 3, 4, 7
California v. Beheler, 463 U.S. 1121 (1983)	7
Fare v. Michael C., 442 U.S. 707 (1979)	2, 7
Gallegos v. Colorado, 370 U.S. 49 (1962)	2
In re Gault, 387 U.S. 1 (1967)	2
Haley v. Ohio, 332 U.S. 596 (1948)	2
Hawkins v. Alabama, 318 F.3d 1302 (11th Cir. 2003)	5, 6
Oregon v. Mathiason, 429 U.S. 492 (1977)	7
People v. P., 21 N.Y.2d 1, 286 N.Y.S.2d 225, 233 N.E.2d 255 (1967)	3
Schneckloth v. Bustamonte, 412 U.S. 218 (1973)	2
Stansbury v. California, 511 U.S. 318 (1994)	7
Thompson v. Keohane, 516 U.S. 99 (1995)	2, 7
United States v. Erving L., 147 F.3d 1240 (10th Cir. 1998)	2, 4
United States v. J.H.H., 22 F.3d 821 (8th Cir. 1994)	2, 4
United States v. Macklin, 900 F.2d 948 (6th Cir. 1990)	2, 4
Withrow v. Williams, 507 U.S. 680 (1993)	2
STATUTES & RULES	
28 U.S.C. § 2254	1, 5
Sup. Ct. Rule 10	1

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. V 7

RESPONDENT MICHAEL ALVARADO'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Petitioner argues that review is warranted in this case because the Ninth Circuit's decision allegedly conflicts with decisions of this Court, has caused a split among the circuit courts of appeals, and has placed a significant burden on law enforcement. Further petitioner argues that the circuit Courts of Appeals are divided over whether a State court adjudication can be deemed "objectively unreasonable" for purposes of 28 U.S.C. § 2254, where the State court declines to "extend" the rule of a Supreme Court precedent to a new context. Petitioner's arguments are meritless. The Ninth Circuit's decision creates no such split, and is not in conflict with this Court or any other circuit Courts of Appeals

In sum, review by this Court is unwarranted because the Ninth Circuit's decision accords with the law of this Court and does not conflict with any United States Courts of Appeals. *See* Sup. Ct. Rule 10.

STATEMENT OF THE CASE

The underlying facts are undisputed and are recited in Petitioner's petition for writ of certiorari on file with this Court. Respondent incorporates by reference petitioner's statement of the case.

REASONS FOR DENYING THE WRIT

A. THE NINTH CIRCUIT'S DECISION IS NOT INCONSISTENT WITH THIS COURT'S DECISION IN *MIRANDA* NOR DOES IT CONFLICT WITH THE DECISION OF THE 6TH AND 8TH CIRCUIT COURT OF APPEALS.

Petitioner contends that the Ninth Circuit's decision in this case creates a new standard for an "in custody" determination for the purposes of *Miranda* since it holds that juvenile status is relevant to that determination, either as a factor under the totality of the circumstances test, or by way of modification to the reasonable person standard enunciated in *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). Pet. 7; App. A6-A7. The relevant legal principle upon which the Ninth Circuit relied is that juvenile defendants are accorded heightened procedural safeguards commensurate with their age and experience. App. A23. This legal principle is amply supported by Supreme Court precedent. *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948); *see, e.g., Withrow v. Williams*, 507 U.S. 680, 693 (1993); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *In re Gault*, 387 U.S. 1, 45 (1967); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). Petitioner's complaint is that this "new standard" conflicts with this Court's decision in *Berkemer v. McCarty*, 468 U.S. 420 (1984) and has caused a split in the circuits by being "directly inconsistent" with *United States v. Erving L.*, 147 F.3d 1240, 1247-1248 (10th Cir. 1998) and "at least inconsistent" with *United States v. Macklin*, 900 F.2d 948, 949-51 (6th Cir. 1990) and *United States v. J.H.H.*, 22 F.3d 821, 831 (8th Cir. 1994). Pet. 7, 9-10. Petitioner's contentions are meritless for the reasons set forth below.

First, the Ninth Circuit's decision is not inconsistent with this Court's decision in *Berkemer*. In *Berkemer*, a case involving an adult pulled over for a traffic stop, this Court held that "A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. . . . an objective, reasonable-man test is appropriate because, unlike a subjective test, it "is not solely dependent either on the self-serving declarations of the police officers or the defendant, nor does it place upon the police the burden of anticipating the frailties or idiosyncrasies of every person whom they question", quoting *People v. P.*, 21 N.Y.2d 1, 9-10, 286 N.Y.S.2d 225, 232, 233 N.E.2d 255, 260 (1967). *Berkemer*, 468 U.S. at 442 n.35. Petitioner gleans from this language that an objective reasonable man in the suspect's position would not take into account an objective reasonable *juvenile* or the *juvenile's position* as a suspect. *Berkemer* does not conflict with the Ninth Circuit's opinion in this case, it merely does not address it. Moreover, *Berkemer* is consistent here since the Ninth Circuit in fact used the objective reasonable person standard in making its decision. "[An] 'in custody' determination requires an inquiry into whether 'a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." ... "After identifying the relevant circumstances, it is simply unreasonable to conclude that a reasonable 17-year-old, with no prior history of arrest or police interviews, would have felt that he was 'at liberty to terminate the interrogation and leave.'" App. A7., A26.

Second, petitioner attempts to manufacture inconsistencies with other circuit Courts of Appeals for purposes of getting certiorari granted. However, petitioner's perceived "split in the circuits" on this issue is illusory at best. In the decision petitioner cites, as directly conflicting with the Ninth Circuit, *United States v. Erving L., supra,* 147 F.3d at 1248, the 10th Circuit did employ the objective standard, but modified it (as the Ninth Circuit did in this case), to account for the defendant's status as a minor. ("Given these facts, *a reasonable juvenile* in E.L.'s position would not have believed that the officers had curtailed his freedom of movement to a degree associated with formal arrest.") (emphasis added) *Id.* at 1248 citing *Berkemer*, 468 U.S. at 442, 104 S.Ct. 3138. This is consistent with the Ninth Circuit's action in this case.

Petitioner cites two other cases which it purports are "at least inconsistent" with the decision below; however, they are not inconsistent as much as they simply do not address the issue at hand. Pet. 10. In *United States v. Macklin*, 900 F.2d 948, 949-951 (6th Circuit 1990), the 6th Circuit merely restated "the reasonable man in the suspect's position" test enunciated in *Berkemer*, and held that "A reasonable person could not have thought that, by being questioned in front of the person's home in the manner in which [the officers] questioned the defendants, the person was in custody." *Id.* at 951. That case involved an adult mildly retarded man, not a juvenile. In *United States v. J.H.H., supra,* 22 F.3d at 831, a First Amendment case on cross-burning, the 8th Circuit found that none of the district court's findings were clearly erroneous, including the district court's adoption of the magistrate's findings that "J.H.H. was not in custody when he made the statement, and that, even if he was in custody, he made a valid waiver of his Miranda rights." *Id.* at 831. The 8th

Circuit held that under the clearly erroneous standard of review, "J.H.H.'s interview exhibited none of [the] common indicia of police custody: he was informed that the questioning was voluntary, that he was not under arrest, and that he was free to leave at any time . . . " *Id.* at 831. This case is not inconsistent with the Ninth Circuit's decision below just because it does not specifically address the issue at hand.

Petitioner also claims that the decision below creates a significant burden on law enforcement since "law enforcement officers will not be able to determine whether *Miranda* rights should be given to a juvenile unless they can divine the age and experience of the juvenile." Pet. 11. However, as the Ninth Circuit pointed out in its analysis of this issue" "every state court that has addressed this threshold question of how juvenile status affects the 'in custody' analysis has ruled that juvenile status is a factor in the 'in custody' determination." App. A19 n.5, A24 n.8. Thus, law enforcement officers all over the country are already taking a person's juvenile status into account when interrogating and deciding whether to read them their *Miranda* rights.

B. THE CIRCUIT COURTS OF APPEALS ARE NOT DIVIDED OVER WHETHER A STATE COURT ADJUDICATION CAN BE DEEMED "OBJECTIVELY UNREASONABLE" FOR PURPOSES OF 28 U.S.C. § 2254, WHERE THE STATE COURT DECLINES TO "EXTEND" THE RULE OF A SUPREME COURT PRECEDENT TO A NEW CONTEXT SINCE BOTH THE 9TH AND 11TH CIRCUITS AGREE THAT IT CAN.

Petitioner contends that the 11th Circuit decision in *Hawkins v. Alabama*, 318 F.3d 1302 (11th Cir. 2003) is in

conflict with the decision below and thus creates a split in authority. Pet. 12-13. Petitioner's contention is without merit since both decisions agree that extension of a clearly established principle may be required by relevant Supreme Court case law where a state court's decision fails to extend the clearly established legal principle to a new context in a way that is objectively unreasonable. App. A23-24; *See Hawkins v. Alabama*, *supra*, 18 F.3d at 1307 n.3. In *Hawkins*, the 11th circuit agrees that under some circumstances there is no conflict between the AEDPA and requiring state courts to extend Supreme Court rules. *Id.* ("Extend might only mean to apply the *ratio decidendi* of Supreme Court decisions fully and completely (and not in some crabbed way) so that the rule of law covers new and different facts and circumstances – objectively reasonably viewed – are materially or, put differently, substantially the same that were in the mind of the Supreme Court when it laid down the rule.")

Although *Hawkins* apparently disagrees with the Ninth Circuit's action in the case below, the holding in *Hawkins* does not conflict in the idea that Supreme Court precedent *can* be extended in AEDPA cases where it was unreasonable for the state court not to do so. Specifically, the action which the 11th Circuit condemns in n.3, was not undertaken by the Ninth Circuit. The decision below did not widen the Supreme Court's rules to reach new and substantially different circumstances not contemplated by the Supreme Court; instead it merely found that juvenile status is a relevant factor in the totality of the circumstances analysis in determining custody. Indeed, had California considered respondent's juvenile status in its analysis of the custody determination it would not have been "filling a gap for which the Supreme Court had not yet determined the law" but instead would have been applying the *ratio decidendi* of several Supreme Court

decisions fully and completely so that the existing rule of law would logically cover the facts and circumstances of the case below. The reasoning of the Ninth Circuit in "extending" the rule is substantially the same reasoning that was in the mind of the Supreme Court when they laid down the rules regarding how state courts should analyze a juvenile's understanding and waiver of his Fifth Amendment rights (App. A24 citing *Fare v. Michael C.*, *supra*, 442 U.S. at 725; U.S. Const. Amend. V), as well as how they should consider the totality of the circumstances in determining whether a person is in custody for purposes of *Miranda*. App. A22 citing *Thompson*, 516 U.S. at 112; *Stansbury v. California*, 511 U.S. 318, 322 (1994); *Berkemer*, 468 U.S. at 440-42; *California v. Beheler*, 463 U.S. 1121, 1125 (1983); *Oregon v. Mathiason*, 429 U.S. 492, 494-95 (1977). The Ninth Circuit extended Supreme Court precedent in a constitutionally logical way within the mandates of the Congress's intent in AEDPA. There is no split in authority.

CONCLUSION

For the foregoing reasons, Michael Alvarado respectfully requests that this Court deny the Petition.

Dated: June 13, 2003

Respectfully submitted,

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